

TO AMEND THE NATIONAL DEFENSE ACT

JANUARY 29, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. FROTHINGHAM, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany S. 3760]

The Committee on Military Affairs, to which was referred the bill (S. 3760) to amend in certain particulars the national defense act of June 3, 1916, as amended, and for other purposes, has had it under consideration, and recommends that it pass.

The provisions of this bill refer exclusively to the national defense act of June 3, 1916, as amended by the Army reorganization act of 1920. The proposals were drafted after consultation between the officers representing the National Guard and the War Department and have the entire approval of both the War Department and the National Guard. They are intended to assist in the development of the guard and are in its best interests. The provisions of this measure do not increase any appropriations and will insure a further efficiency of the National Guard.

Section 1: To amend section 58 of the national defense act.

For a number of years past the National Guard regulations have authorized reenlistment in the National Guard of men between the ages of 45 and 64 years. In a decision dated August 30, 1924 (4 Comp. Gen. 243), the Comptroller General held that under existing laws enlisted men of the National Guard can not be more than 45 years of age, that the enlistment of men over 45 is contrary to law, and that such men can not receive pay from Federal funds for services they perform. There are in the National Guard a considerable number of enlisted men between the ages of 45 and 64, many of whom hold positions as armory employees, caretakers, and noncommissioned officers. It is very desirable that these men be continued in service in the National Guard. The proposed amendments to this section will make this possible, and will also validate payments made to enlisted men within these age limits.

Warrant officers, who have been otherwise authorized for the National Guard since this section was enacted, are specifically provided for in the proposed change. This is important to forestall an adverse decision by the Comptroller General on payments to warrant officers between the ages of 45 and 64.

These amendments to this section will involve no increase in appropriations, as the Militia Bureau appropriation for the present fiscal year, and the estimates for the next fiscal year which have already been submitted, include funds for the pay of warrant officers and enlisted men between the ages of 45 and 64 years.

Section 2: To add section 77½ to the national defense act.

Section 2 provides for boards of inquiry to determine the general fitness of any National Guard officer who has received Federal recognition. This will provide authority for the Secretary of War to withdraw such recognition when it has been affirmatively shown that the individual officer is no longer entitled to it.

Section 3: To amend section 78, national defense act.

This section proposes to limit in future the enlistment of men in the National Guard Reserve to those who under section 58 are eligible for enlistment in the active National Guard; to modify the oath of enlistment so as to permit the transfer of a reservist, at the option of proper authority, to the active list; to permit the transfer of active guard men to the guard reserve, also at the option of proper authority. The proviso protects the rights of individuals as to total length of service for which they originally enlisted. The reason advanced for this change is that it frequently happens that an active guard man leaves his home station or State for a few months on business or otherwise, and later on returns. Under the present rule he is discharged from the guard when he leaves. The change would permit his transfer to a reserve status and upon return to his State or station he could be transferred back to the active guard, at the discretion of proper authority.

Section 4: To amend section 81, national defense act.

Section 4 provides that the Chief of the Militia Bureau of the War Department shall be appointed from the active officers of the guard who have been federally recognized. Heretofore the Chief of the Militia Bureau has been selected from "present and former National Guard officers." It is believed that the change will be advantageous. This section further provides that hereafter the Chief of the Militia Bureau shall cease to hold office upon reaching the age of 64 years; that upon accepting the office he be appointed a major general in the Officers' Reserve Corps, to hold such commission while serving as Chief of the Militia Bureau, and his pay is fixed in accordance with his rank and that he will be eligible for reappointment; that the three officers detailed in the Militia Bureau be federally recognized National Guard officers, and that in case the office of the chief of the bureau becomes vacant or the incumbent because of disability is unable to discharge the powers and duties of his office, the reserve officer senior in rank on duty in the bureau appointed from the National Guard shall act as chief of bureau until the incumbent is able to resume his duties or the vacancy is regularly filled. This will insure that a National Guard man will at all times be the active head of the Militia Bureau.

Section 5: To amend section 87, national defense act.

Under existing provisions of section 87, in all cases where a State, Territory, or the District of Columbia has been charged with the total value of property issued to it on account of its loss, damage, or destruction through negligence, and stoppages and collections are made against those responsible therefor, and the damaged property sold by the Secretary of War, the proceeds of such sales, stoppages, and collections are deposited in the Treasury to the credit of such State, Territory, or the District of Columbia, but such credit is not available for the purpose of expenditure after the end of the fiscal year in which such sales, stoppages, or collections are made. This credit is sometimes entered so near June 30 as to be practically unavailable.

This amendment merely makes the credit available for expenditure throughout the succeeding fiscal year which is in accordance with similar provisions of law relating to sales of public property, supplies, etc., by the quartermaster department.

Section 6: To amend the eighth paragraph of section 127a, national defense act.

Under above-mentioned eighth paragraph of section 127a, national defense act, reserve officers and National Guard officers are credited for the purpose of relative rank with all active Federal service. The reserve officers who attend summer encampments or who perform other active duties are credited with all such periods in determining their relative rank with the Regular Army and National Guard officers. National Guard officers when in attendance at encampments and maneuvers, camps of instruction, and service schools are not in the Federal service, and so are not given credit for such periods of duty when relative rank is determined. The result is that National Guard officers are deprived of credit for the performance of duties for which reserve officers receive credit. This situation is unfair and should be corrected. The proposed change will accomplish such correction.

Section 7: To authorize Secretary of War to reconvey to the Monroe Water Supply Company that portion of the lands in the State of Pennsylvania conveyed by the said company to the United States under its deed of June 12, 1916, and described in said deed.

This section of the proposed bill is necessitated by the discovery that in the purchase by the United States from the Monroe Water Supply Co. in 1915 of the lands described for an artillery target range at Tobyhanna, Pa., the tract actually conveyed to the United States was, by error of description or misunderstanding as to location, not the tract actually intended to be bought. The land actually conveyed is of little or no use to the United States and the grantors have signified their willingness to exchange, without cost to the United States, land of approximately equal area in an adjoining tract which affords the fire position desired for a target range. The land now to be conveyed to the United States in exchange has an area of about 22 acres and the present value of each piece is within the sum of \$100.

The object of the proposed amendment is merely to authorize and effect the exchange.

TO AMEND THE NATIONAL DEFENSE ACT

FEBRUARY 5, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. FROTHINGHAM, from the Committee on Military Affairs, submitted the following

SUPPLEMENTAL REPORT

[To accompany S. 3760]

This supplemental report is made for the purpose of placing the following letter from the Secretary of War before the House for the information of Members.

The letter of the Secretary of War on this legislation follows:

DECEMBER 19, 1924.

HON. JOHN C. MCKENZIE,
*Acting Chairman Committee on Military Affairs,
House of Representatives.*

MY DEAR MR. MCKENZIE: I am sending you herewith a proposed bill to amend certain sections of the national defense act, as amended, relating to various matters affecting the National Guard and the Militia Bureau.

Accompanying the proposed bill is a memorandum containing an explanation in detail of the several amendments.

The National Guard Association and the Chief of the Militia Bureau have originated these amendments, which, after consideration by the War Department, have been adopted in the modified form in which they appear in this bill.

I recommend the passage of this bill in its present form, as in my opinion its enactment will be of advantage in the administration of the provisions of the national defense act relative to matters affecting the National Guard and the Militia Bureau.

Sincerely yours,

JOHN W. WEEKS, *Secretary of War.*

A BILL To amend in certain particulars the national defense act of June 3, 1916, as amended, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 58 of the national defense act of June 3, 1916, as amended, be, and the same is hereby, amended to read as follows:

"SEC. 58. Composition of the National Guard: The National Guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years men who upon original enlistment shall be not less than eighteen nor more than forty-five years of age, or who in subsequent enlistments shall not be more than sixty-four years of age, organized, armed, and equipped as hereinafter provided,

and of commissioned officers and warrant officers between the ages of twenty-one and sixty-four years: *Provided, That in cases of appointments of warrant officers or enlistments made in accordance with National Guard Regulations, all payments heretofore made to such warrant officers and enlisted men for participating in exercises or performing the duties described in sections 92, 94, 97, and 99 of the national defense act of June 3, 1916, as amended, or any bona fide claim therefor, shall not be held or considered invalid because such warrant officer or enlisted man was of an age greater than forty-five years at the time of his appointment or enlistment or at the time of the performance of such duties.*"

SEC. 2. That said national defense act, as amended, be, and the same is hereby, further amended by inserting therein, immediately after section 77 thereof, a new section to be known as section 77½, and to read as follows:

"SEC. 77½. Withdrawal of Federal recognition: At any time the moral character, capacity, and general fitness for the service of any National Guard officer may be determined by an efficiency board of three commissioned officers senior in rank to the officer whose fitness for service shall be under investigation, appointed from the Regular Army or the National Guard or both, under such rules and regulations as may be prescribed by the Secretary of War; and if the board shall recommend the withdrawal of Federal recognition of such officer, the Secretary of War may, in his discretion, withdraw recognition accordingly."

SEC. 3. That section 78 of the national defense act of June 3, 1916, as amended, be, and the same is hereby, amended to read as follows:

"SEC. 78. That hereafter ~~men~~ Men duly qualified under regulations prescribed by the Secretary of War for enlistment in the active National Guard may enlist in the National Guard Reserve for a period of one or three years, under such regulations as the Secretary of War shall prescribe, and on so enlisting they shall subscribe to the following enlistment contract and take the oath therein specified: 'I do hereby acknowledge to have voluntarily enlisted this — day of —, 19—, as a soldier in the National Guard Reserve of the United States and of the State of — to serve in the reserve thereof; or in the active National Guard of the United States and said State if transferred thereto, for a period of one (or three) year—, unless sooner discharged by proper authority, and I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the State of —, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States and the governor of the State of —, and of the officers appointed over me according to law and the rules and Articles of War.' Under such regulations as the Secretary of War may prescribe, enlisted men of the active National Guard may be transferred to the National Guard Reserve; likewise, enlisted men hereafter enlisted in or transferred to the National Guard Reserve may be transferred to the active National Guard: *Provided, That no enlisted man shall be required to serve under any enlistment for a longer time than the period for which he enlisted in the active National Guard or National Guard Reserve, as the case may be.* That members Members of said reserve, officers, and enlisted men, when engaged in field or coast defense training with the active National Guard, shall receive the same Federal pay and allowances as those occupying like grades on the active list of said guard when likewise engaged: *Provided further, That, except as otherwise specifically provided in this act, no commissioned or enlisted reservist shall receive any pay or allowances out of any appropriation made by Congress for National Guard purposes.*"

SEC. 4. That section 81 of the national defense act of June 3, 1916, as amended, be, and the same is hereby, amended to read as follows:

"SEC. 81. Militia Bureau of the War Department: The Militia Division of the War Department shall hereafter be known as the Militia Bureau of the War Department. After January 1, 1921, the The Chief of the Militia Bureau shall be appointed by the President, by and with the advice and consent of the Senate, by selection from lists of present and former active Federally recognized National Guard officers, recommended by the governors of the several States and Territories as suitable for such appointment, who held commissions in the Officers' Reserve Corps, and have had ten or more years' commissioned service in the active National Guard, at least five of which has have been in the line, and who have attained at least the grade of major. He The Chief of the Militia Bureau shall hold office for four years, unless sooner removed for cause, but when he is 64 years of age he shall cease to hold such office. Upon accepting his office the Chief of the Militia Bureau shall also be appointed a major general in the Officers' Reserve Corps and shall be commissioned in the Army of the United States, which appointment and commission shall terminate when he ceases to hold such office. and The

Chief of the Militia Bureau shall have the rank, pay and allowances of a major general of the Regular Army provided in section 8 of the pay readjustment act of June 10, 1922, during his tenure of office, but shall not be entitled to retirement or retired pay. While serving as chief, his reserve commission shall continue in force, and shall not be terminated except for cause assigned. Until the chief is appointed as provided in this section, the President may assign an officer of the Regular Army, not below the grade of colonel, to perform the duties of chief. For duty in the Militia Bureau and for instruction of the National Guard, the President shall assign such number of officers and enlisted men of the Regular Army as he may deem necessary. He The President may also assign with their consent for to duty in the Militia Bureau three officers who held or have held commissions in the at the time of their initial assignment are active federally recognized National Guard officers, and who at the time of assignment are reserve officers, and any such officer while so assigned shall receive out of the whole fund appropriated for the support of the National Guard the pay and allowances provided in the pay readjustment act of June 10, 1922, as amended, for officers of the National Guard when authorized by law to receive Federal pay. The President may also assign, with their consent, and within the limits of the appropriations previously made for this specific purpose, not exceeding five hundred officers of the active federally recognized National Guard, and who held are reserve commissions officers, to duty with the Regular Army, in addition to those attending service schools, and while so assigned they shall receive the pay and allowances authorized in the preceding sentence, to be paid out of the whole fund appropriated for the support of the militia. The pay and allowances provided in this section for the Chief of the Militia Bureau and for the reserve officers assigned to duty from the National Guard shall be paid out of the whole fund appropriated for the support of the National Guard. The age limitation herein prescribed shall not apply to the existing Chief of the Militia Bureau during his present term of office."

SEC. 5. That section 87 of the national defense act of June 3, 1916, as amended, be, and the same is hereby, amended to read as follows:

"SEC. 87. Disposition and replacement of damaged property and so forth: All military property issued to the National Guard as herein provided shall remain the property of the United States. Whenever any such property issued to the National Guard in any State or Territory or the District of Columbia shall have been lost, damaged, or destroyed, or become unserviceable or unsuitable by use in service or from any other cause, it shall be examined by a disinterested surveying officer of the Regular Army or the National Guard, detailed by the Secretary of War, and the report of such surveying officer shall be forwarded to the Secretary of War, or to such officer as he shall designate to receive such reports; and if it shall appear to the Secretary of War from the record of survey that the property was lost, damaged, or destroyed through unavoidable causes, he is hereby authorized to relieve the State or Territory or the District of Columbia from further accountability therefor. If it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable State, Territory, or District of Columbia, to be paid from State, Territory, or District funds, or any funds other than Federal. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition by sale or otherwise, shall be made of them; and if sold, the proceeds of such sale, as well as stoppages against officers and enlisted men, and the net proceeds of collections made from any person or from any State, Territory, or District to reimburse the Government for the loss, damage, or destruction of any property, shall be deposited in the Treasury of the United States as a credit to said State, Territory, or the District of Columbia, accountable for said property, and as a part of and in addition to that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war, shall remain available throughout the fiscal year following that in which the sales, stoppages, and collections were effected, for the purposes provided for in that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war: Provided, further, That if any State, Territory, or the District of Columbia shall neglect or refuse to pay, or to cause to be paid, the money equivalent of any loss, damage, or destruction of property charged against such State, Territory, or the District of Columbia by the Secretary of War after survey by a disinterested officer appointed as hereinbefore provided, the Secretary of War is hereby authorized to debar such State, Territory, or the District of Columbia from further participation in any

and all appropriations for the National Guard until such payment shall have been made: *And Provided further*, That property issued to the National Guard and which has become unserviceable through fair wear and tear in service, may, after inspection thereof and finding to that effect made by an officer of the Regular Army designated by the Secretary of War, be sold or otherwise disposed of, and the State, Territory, or District of Columbia, accountable, shall be relieved from further accountability therefor; such inspection, and sale or other disposition, to be made under regulations prescribed by the Secretary of War, and to constitute as to such property a discretionary substitute for the examination, report, and disposition provided for elsewhere in this section."

Sec. 6. That the eighth paragraph of section 127a of the national defense act of June 3, 1916, as amended, be, and the same is hereby, amended to read as follows:

"Unless special assignment is made by the President under the provisions of the one hundred and nineteenth article of war, all officers in the active service of the United States in any grade shall take rank according to date, which, in the case of an officer of the Regular Army, is that stated in his commission or letter of appointment, and, in the case of a reserve officer or an officer of the National Guard called into the service of the United States, shall precede that on which he is placed on active duty by a period equal to the total length of active *Federal service and service under the provisions of sections 94, 97, and 99 of this act* when he may have performed in the grade in which called or any higher grade. When dates of rank are the same, precedence shall be determined by length of active commissioned service in the Army. When length of such service is the same, officers of the Regular Army shall take rank among themselves according to their places on the promotion list, preceding reserve and National Guard officers of the same date of rank and length of service, who shall take rank among themselves according to age."

Sec. 7. That the Secretary of War be, and he hereby is, authorized, in his discretion, to reconvey to the Monroe Water Supply Co. that portion of the lands in the State of Pennsylvania conveyed by the said company to the United States under its deed of June 12, 1915, and described in said deed as follows:

"No. 38. All that part of the warrantee tract in the name of William Sproat, situate in said township of Coolbaugh, Monroe County, bounded and described as follows: Beginning at a point in the north line of the William Sproat warrantee tract, said point being south forty-five degrees thirty minutes west, fifty-six perches from a stone mound which marks the southeast corner of tract of land in the warrantee name of James Hollingshead, now owned by the Pocono Mountain Ice Company; thence by land in the warrantee names of James Hollingshead and Jacob Postens north forty-five degrees thirty minutes east, one hundred and twenty-one perches, more or less, to the northwest corner of the William Sproat tract; thence south forty-four degrees thirty minutes east, along the south line of the Nathan Levering warrantee tract thirty perches to a point; thence south forty-five degrees thirty minutes west, one hundred and thirty-three perches to a point; thence north forty-four degrees thirty minutes west, thirty perches to the point, the place of beginning, containing twenty-two acres, more or less. Courses as of meridian May 12, 1902. It being the intent to convey that portion of the tract north of the public road leading from Tobyhanna to Sterling, adjacent to the tract of land in the warrantee name of Jacob Postens," upon the conveyance by the said Monroe Water Supply Company to the United States of a tract of land of approximately equal area to that named in the above description and lying within the adjoining Nathan Levering warrantee tract, at such location within the said tract as may be agreed upon by the Secretary of War with said company.

MEMORANDUM GIVING REASONS IN SUPPORT OF EACH SECTION OF THE ACCOMPANYING BILL TO AMEND THE NATIONAL DEFENSE ACT, AND FOR OTHER PURPOSES

Section 1. *To amend section 58 of the national defense act.*—For a number of years past, the National Guard Regulations have authorized reenlistment in the National Guard of men between the ages of 45 and 64 years. In a decision dated August 30, 1924 (4 Comp. Gen. 243), the Comptroller General held that under existing laws enlisted men of the National Guard can not be more than 45 years of age, that the enlistment of men over 45 is contrary to law and that such men can not receive pay from Federal funds for services they perform. There are

in the National Guard a considerable number of enlisted men between the ages of 45 and 64, many of whom hold positions as armory employees, caretakers, and noncommissioned officers. It is very desirable that these men be continued in service in the National Guard. The proposed amendments to this section will make this possible, and will also validate payments made to enlisted men within these age limits.

Warrant officers, who have been otherwise authorized for the National Guard since this section was enacted, are specifically provided for in the proposed change. This is important to forestall an adverse decision by the Comptroller General on payments to warrant officers between the ages of 45 and 64.

These amendments to this section will involve no increase in appropriations, as the Militia Bureau appropriation for the present fiscal year, and the estimates for the next fiscal year which have already been submitted, include funds for the pay of warrant officers and enlisted men between the ages of 45 and 64 years.

Section 2: *To add section 77½ to the national defense act.*—Section 77 of the national defense act provides efficiency boards to inquire into and determine the moral character, capacity, and general fitness for the service of any National Guard officer, and if the finding of such board be unfavorable to an officer and be approved by the official authorized to appoint such officer, he shall be discharged. These boards are convened by the governors of the States, who are empowered to make such discharges of National Guard officers.

Under the national defense act it is one of the duties of the Secretary of War to extend Federal recognition to National Guard officers after they have met all the requirements for such recognition. It would seem that the Secretary of War should also have the authority to withdraw this Federal recognition when an officer's moral character, capacity, and general fitness for service has been determined. The proposed section 77½ is intended to provide the Secretary of War with the means of determining the facts in any particular case, when in his judgment such action appears to be advisable.

Section 3: *To amend section 78, national defense act.*—This section proposes to limit in future the enlistment of men in the National Guard Reserve to those who under section 58 are eligible for enlistment in the active National Guard; to modify the oath of enlistment so as to permit the transfer of a reservist, at the option of proper authority, to the active list; to permit the transfer of active guardsmen to the guard reserve also at the option of proper authority. The proviso protects the rights of individuals as to total length of service for which they originally enlisted. The reason advanced for this change is that it frequently happens that an active guardsman leaves his home station or State for a few months on business, or otherwise, and later on returns. Under the present rule he is discharged from the guard when he leaves. The change would permit his transfer to a reserve status and upon return to his State or station he could be transferred back to the active guard, at the discretion of proper authority.

Section 4: *To amend section 81, national defense act.*—These proposed changes are recommended by the National Guard Association. They provide:

(a) That the Chief of the Militia Bureau be appointed from active federally recognized National Guard officers and not from present and former National Guard officers, as it is considered the time has passed when former National Guard officers should be considered in this appointment.

(b) That the Chief of the Militia Bureau cease to hold office upon reaching 64, except for the present incumbent.

(c) That upon accepting office he be appointed a major general in the Officers' Reserve Corps, said appointment to terminate when he ceases to hold office.

(d) Fixes his pay and allowances in accordance with pay act of June 10, 1922.

(e) That the three officers detailed in the Militia Bureau be federally recognized National Guard officers.

(f) Other minor changes to coordinate the entire section.

Section 5: *To amend section 87, national defense act.*—Under existing provisions of section 87, in all cases where a State, Territory, or the District of Columbia has been charged with the total value of property issued to it on account of its loss, damage, or destruction through negligence, and stoppages and collections are made against those responsible therefor, and the damaged property sold by the Secretary of War, the proceeds of such sales, stoppages, and collections are deposited in the Treasury to the credit of such State, Territory, or the District of Columbia, but such credit is not available for the purpose of expenditure after the end of the fiscal year in which such sales, stoppages, or collections are made. This credit is sometimes entered so near June 30 as to be practically unavailable.

This amendment merely makes the credit available for expenditure throughout the succeeding fiscal year, which is in accordance with similar provisions of law relating to sales of public property, supplies, etc., by the Quartermaster Department.

Section 6: *To amend the eighth paragraph of section 127a, national defense act.*—Under above-mentioned eighth paragraph of section 127a, national defense act, reserve officers and National Guard officers are credited for the purpose of relative rank with all active Federal service. The reserve officers who attend summer encampments or who perform other active duties are credited with all such periods in determining their relative rank with the Regular Army and National Guard officers. National Guard officers when in attendance at encampments and maneuvers, camps of instruction and service schools are not in the Federal service, and so are not given credit for such periods of duty when relative rank is determined. The result is that National Guard officers are deprived of credit for the performance of duties for which reserve officers receive credit. This situation is unfair and should be corrected. The proposed change will accomplish such correction.

Section 7: *To authorize Secretary of War to reconvey to the Monroe Water Supply Co. that portion of the lands in the State of Pennsylvania conveyed by the said company to the United States under its deed of June 12, 1916, and described in said deed.*—This section of the proposed bill is necessitated by the discovery that in the purchase by the United States from the Monroe Water Supply Co. in 1915 of the lands described for an artillery target range at Tobyhanna, Pa., the tract actually conveyed to the United States was, by error of description or misunderstanding as to location, not the tract actually intended to be bought. The land actually conveyed is of little or no use to the United States and the grantors have signified their willingness to exchange, without cost to the United States, land of approximately equal area in an adjoining tract which affords the fire position desired for a target range. The land now to be conveyed to the United States in exchange has an area of about 22 acres and the present value of each piece is within the sum of \$100.

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